IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.274 OF 2005

Vinaya Phansalkar. ...Petitioner.

Vs.

M/s.Tata Memorial Hospital. ...Respondent.

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Mr.P.Gopalkrishnan with Ms.Shobana Gopal for the Petitioner.

Mr.S.K.Talsania with Mr.S.U.Uttam i/b.Mulla & Mulla for the Respondent.

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**CORAM : DR.D.Y.CHANDRACHUD, J.**

March 14, 2005.

**P.C. :**

The Petitioner was a Staff Nurse at the Tata Memorial Hospital. A chargesheet was issued to her on 20th May 1992, recording that she had remained absent from duty since 18th February 1991, that is to say, for a period in excess of 15 months without sanctioned leave. It was stated that two letters were sent to the Petitioner directing her

to report to the Staff Physician despite which she did not carry out those instructions. Again a letter dated 3rd October 1991 was issued to the Petitioner whereupon she submitted a Medical Certificate dated 15th October 1991 to the effect that she was undergoing treatment for hypertension. The Petitioner was informed on 3rd December 1991 that a Medical Certificate by an outside doctor could not be accepted and that she should report to the Staff Physician. Thereafter, a show cause notice for disciplinary action was issued to the Petitioner and it was alleged that there was an assurance by the Petitioner that she would report to the Staff Physician between 17th and 21st February 1992. The Petitioner failed to do so. Then a further letter dated 29th April 1992 was sent, despite which the Petitioner did not present herself before the Staff Physician for evaluation of her condition. This was the foundation of the chargesheet.

2. A disciplinary enquiry was held in which the Petitioner participated initially. The explanation tendered by the Petitioner on 10th June 1992 was that the atmosphere of the Hospital was such as to make her sick and depressed as a result of which she was not able to join duties. The Enquiry

Officer submitted his report of 15th September 1992 and came to the conclusion that the Petitioner had no justification for being unauthorisedly absent and that despite repeated requests by the Hospital to the Petitioner to report to the Staff Physician of the Hospital, she had consistently absented herself. On 28th September 1992, the Disciplinary Authority imposed a penalty of compulsory retirement holding that though a case for dismissal had been made out, a more lenient view was taken having regard to the length of service. The order was confirmed in appeal on 16th December 1993.

3. The past service record of the Petitioner would show a consistent pattern of unauthorised absence from duty. Even prior to 1991, the Petitioner had remained unauthorisedly absent from time to time. On 29th June 1976, a warning was issued to the Petitioner by the Superintendent of the Tata Memorial Hospital on that ground. Again on 28th May 1981, a warning was issued for unauthorised absence. On 29th December 1982, the Hospital issued a warning to the Petitioner on the ground that she had remained unauthorisedly absent from 11th October 1982. The record shows a pattern of absence from duty in 1985, 1986, 1987 and 1989. On 7th August 1990, a warning was issued to the

Petitioner for unauthorised absence, followed by a similar communication dated 11th September 1990. The service record of the Petitioner, therefore, was anything but blemishless and shows a consistent pattern of unauthorised absence from duty.

4. After the order of compulsory retirement, a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947 was made in 1995. After issues were framed on 15th July 1998, no steps were taken by the Petitioner to adduce evidence before the Labour Court. The Learned Trial Judge has observed in para 6 of the order that the Roznama showed that a "number of last chances" granted to the Petitioner to lead evidence were not availed of. In these circumstances, the Labour Court held that the Petitioner failed to establish as to how the findings arrived at in the enquiry were not fair and proper or in regard to the manner in which the punishment was shockingly disproportionate.

5. The Labour Court held that the appropriate Government in the case of the Tata Memorial Hospital would be the Central Government and, therefore, it would have no jurisdiction to entertain the reference. However, in order to

render a full, final and complete adjudication in the case, the Labour Court also dealt with the merits of the matter which have been adverted to in the earlier part of the judgment. Counsel appearing on behalf of the Respondent has urged that it may not be necessary for this Court to enter upon a determination of which Government is the appropriate Government in so far as the facts of the present case are concerned, since the uncontroverted facts, it was submitted, are such as would lead the Court to decline the exercise of its jurisdiction under Article 226. A compilation containing the service record has been placed before the Court. There is documentary material to show the persistent absence of the Petitioner from duty over a number of years, including the period proximate to the chargesheet. The authenticity of the service record and the factum of unauthorised absence is not controverted before the Court by Counsel for the Petitioner. The facts relating to the misconduct which have been adverted to in the earlier part of the order would demonstrate that the nature of the unauthorised absence and the past record, would show a consistent course of behaviour involving absence from duty. This would certainly not warrant the exercise of the jurisdiction under Article 226. In an appropriate case the Court

would have occasion to determine whether the appropriate Government is the Central Government or the State Government in the case of the Respondent. In the present case, on the record as it stands, the intervention of this Court under Article 226 is not warranted. The Petition is accordingly rejected.

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